

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

In re the application of: Burson

Application No: 10/788,640

Filed: February 27, 2004

Title: Flexible Transmit Voice Tube

Atty. Dkt. No. 01-7119(PLANP034)

Examiner: Faulk, Devona E.

Assignee: Plantronics, Inc.

Art Unit: 2644

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## TRANSMITTAL

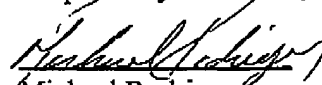
Sir:

Transmitted herewith is a Notice of Appeal in the above-identified application.

The fee has been calculated as shown below.

- ☒ Applicants hereby petition for a three month(s) extension of time to respond to the outstanding Office Action.
- ☒ Please charge \$1,520 (\$1,020 for three months extension of time and \$500 for this Notice of Appeal) to Deposit Account No. 50-2315 (Order No. 01-7119). A copy of this sheet is enclosed.
- ☐ Credit Card Payment Form PTO-2038 is enclosed authorizing a charge of \$\_\_\_\_\_.
- ☒ Applicant believe that no (additional) Extension of Time is required; however, if it is determined that such an extension is required, Applicant hereby petition that such an extension be granted and authorize the Commissioner to charge the required fees for an Extension of Time under 37 CFR 1.136 to Deposit Account No. 50-2315 (Order No. 01-7119).
- ☒ If the required fees are missing or any additional fees are required during the pendency of the subject application, please charge such fees or credit any overpayment to Deposit Account No. 50-2315 (Order No. 01-7119). A copy of this sheet is enclosed.

Respectfully submitted,

  
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## FACSIMILE COVER SHEET

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Date: January 15, 2006

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Signed: Michael Rodriguez  
Name: Michael Rodriguez

Sender: Michael Rodriguez Reg. No.: 53,528

Re: U.S. Pat. App. No. 10/788,640  
Entitled: Flexible Transmit Voice Tube  
Attorney Docket Number: 01-7119

Pages: 13 (including this facsimile cover page)

To: Patent and Trademark Office  
Art Unit: 2644  
Examiner: Faulk, Devona E

### MESSAGE:

Attached are:

1. Transmittal (1 page);
2. Response to final Office Action (5 pages);
3. Notice of Appeal (1 Page);
4. Pre-Appeal Brief Request for Review (1 page); and
5. Reasons for Pre-Appeal Brief Request for Review (4 pages).

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

In re the application of:  
Burson et al.

Application No: 10/788,640

Filed: February 27, 2004

Title: Flexible Transmit Voice Tube

Attorney Docket No. 01-7119

Examiner: Faulk, Devona E

Art Unit: 2644

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Signed:   
Name: Michael Rodriguez

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicant requests review of the final rejection mailed on July 14, 2005 in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheets (4 pages).

Note: No more than five (5) pages may be provided.

I am the:

- ☒ attorney or agent of record. Registration Number 53,528.  
☐ attorney or agent acting under 37 CFR 1.34. Registration Number \_\_\_\_\_.  
☒ If the required fees are missing or any additional fees are required during the pendency of the subject application, please charge such fees or credit any overpayment to Deposit Account No. 50-2315 (Order No. 01-7119). A copy of this sheet is enclosed.

Respectfully submitted,

January 15, 2006

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****PATENT**

In re the application of: Burson et al.

Application No: 10/788,640

Filed: February 27, 2004

Title: Flexible Transmit Voice Tube

Attorney Docket No. 01-7119

Examiner: Faulk, Devona E

Art Unit: 2644

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Signed: 

Name: Michael Rodriguez

**Reasons For Pre-Appeal Brief Request For Review**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The reasons for the Pre-Appeal Brief Request for Review are set forth below.

**In rejecting claims 1, 5, 6, 8, 9, 13, 15, 18, and 19 under 35 U.S.C. §102(b), the Examiner did not establish that Scott (USPN 4,917,504) discloses or teaches all elements of the claimed invention so as to render the claims anticipated by Scott**

Claims 1, 5, 6, 8, 9, 13, 15, 18, and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by Scott. However, the Examiner did not establish that Scott discloses each and every element of the claimed invention to render the claims as anticipated by Scott.

Independent claim 1 generally recites a headset having an audio receiver, a headset body, a microphone, and a flexible voice tube that defines a lumen. The flexible voice tube is bendable into a curvilinear operative shape and position while *preventing kinking and retains the curvilinear operative shape and position* throughout its operative use until further adjustment. The lumen generally extends between an open end of the flexible voice tube to the microphone.

Independent claim 8 similarly recites a voice tube having a *kink-resistant* flexible tubular member, configured to be bendable into a curvilinear operative shape that is generally retained throughout its operative use until further adjustment is made. Independent claim 15 also

generally recites a headset having an acoustic transmission means for acoustic transmission via a lumen, the acoustic transmission means being *kink resistant*, adjustable into a curvilinear operative shape, and generally retaining the curvilinear operative shape until further adjustment is made.

As is known, kink resistance is such that the lumen generally retains its cross-sectional shape and size even when bent to a desired shape. (See also Specification, last sentence of paragraph [0023]). Providing a kink resistant voice tube allows the voice tube to be sufficiently manipulated, without kinking, to position the distal end of the voice tube adjacent to the wearer's mouth for wearers having varying ear-to-mouth distances. In actual use, the voice tube may be bent further for a wearer with a shorter ear-to-mouth distance than for a wearer with a longer ear-to-mouth distance. The kink resistant voice tube allows the voice tube to be bent further without resulting in a kink. Thus a kink resistant voice tube allows the wearer with a shorter ear-to-mouth distance to bend the voice tube as necessary without kinking the voice tube. Having a kink in the voice tube would obviously degrade the acoustic transmission between the open end of the voice tube and the microphone via the voice tube.

In contrast, while Scott discloses a *telescoping* voice pick-up tube 16 that includes "*telescoping* portions 16a, 16b allowing tube 16 to be extended or retracted such that the distal end 16c of the pick-up tube may be positioned adjacent to a wearer's mouth," (col. 3, lines 11-18). In other words, the voice tube *telescopes* to allow a wearer with a shorter ear-to-mouth distance to position the open end of the voice tube near the mouth by *retracting* the voice tube. Thus, *rather than bending* the voice tube, the wearer with a shorter ear-to-mouth distance *retracts* the voice tube.

Scott actually teaches away from providing kink resistance. Specifically, the fact that Scott provides telescoping portions 16a, 16b to allow the pick-up tube 16 to be extended/retracted so as to position the distal end 16c adjacent the wearer's mouth clearly suggests that, the tube 16 is *not* kink resistant, is *not* amenable to being sufficiently manipulated so as to position the distal end 16c adjacent to the wearer's mouth for a wearer with a shorter ear-to-mouth distance, and would *not* retain its curvilinear operative shape and position throughout its operative use until further adjustment, as is generally recited in each of the independent claims 1, 8, and 15, for example.

Furthermore, Scott also does not disclose that the voice tube 16 can retain a curvilinear operative shape and position throughout its operative use until further adjustment. In particular, while Scott discloses that the voice tube 16 includes a flexible portion 16a, Scott does not disclose that the flexible portion 16a would retain its curvilinear shape after it is bent into an operative shape and position.

Thus, not only does Scott make no mention that the pick-up tube be kink resist, as generally recited in each of independent claims 1, 8, and 15, but by providing the extendibility and retractability of the voice tube, Scott clearly suggests that the tube 16 is neither kink resistant nor would it retain its curvilinear shape and position throughout its operative use until further adjustment, as is generally recited in claim 1, for example.

The Examiner contends that preventing formation of kinks in the flexible tube is inherent in Scott. However, Scott only discloses that the voice pick-up tube 16 be made of "a plastic, or another suitable flexible and lightweight material" (col. 3, lines 19-20). The typical basic flexible plastic tubing, such as a common garden hose, is not, without more, kink resistant. Various properties (such as robustness and flexibility) need to be properly balanced so as to provide kink resistance while allowing manipulation of the voice tube and retaining the curvilinear operative shape and position throughout its operative use, as generally recited in the claims. Scott's rigid portion 16b is provided for the telescoping function, i.e., to allow the rigid portion 16b to extend out of and retract into the telescoping portion 16a.

The Examiner notes that Scott's voice tube includes 16a (flexible portion), 16b (stainless steel or other suitable rigid material), and 16c (distal end). However, while kink resistance may be provided in a variety of ways (such as those described in the Specification at, for example, paragraph [0024]), simply because Scott's voice tube *could* be made to be kink resistant does not mean that Scott discloses or suggests a kink resistant voice tube.

Accordingly, Scott fails to teach or suggest that the flexible voice tube be configured to resist kinks as generally recited in each of independent claims 1, 8, and 15.

In view of the foregoing, Scott does not anticipate the claimed inventions under 35 USC §102(b). Withdrawal of the rejection of claims 1, 5, 6, 8, 9, 13, 15, 18, and 19 under 35 U.S.C. §102(b) is respectfully requested.

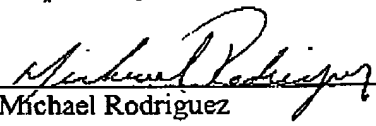
### Conclusion

Because the Examiner's rejections of claims 1, 5, 6, 8, 9, 13, 15, 18, and 19 include legal deficiencies with regard to under 35 U.S.C. § 102(b) and the MPEP, Applicants are entitled to a pre-appeal brief review of the final rejection. And based on the foregoing arguments, Applicants request that the rejection of these claims be withdrawn and the pending claims be allowed.

If the required fees are missing or any additional fees are required during the pendency of the subject application, please charge such fees or credit any overpayment to Deposit Account No. 50-2315 (Order No. 01-7119).

Respectfully submitted,

January 15, 2006  
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